IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 541 OF 1989.

Shri Vithal Sahakari Sakhar Karkhana Ltd..... ..... Petitioner.

V/s

T.Karunakaran, Regional Provident Fund Commissioner..... ..... Respondent.

None appears for the petitioner.

CORAM: A.P. DESHPANDE, J.

4th April, 2007.

ORAL JUDGMENT:

Counsel for the petitioner so also counsel for respondent were absenton the last date. They are as well absent today. Since the matter is of year 1989, without assistance of the learned counsel, after going through the impugned order I dispose of the present writ petition by recording the following reasons.

2. By this petition the sugar factory challenges an order dated 27.7.1988 passed by the Regional Provident Fund Commissioner, Maharashtra & Goa imposing damages under section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

3. As the petitioner had failed to pay in time (i) employees' provident fund contributions, (ii)family pension funds contributions, (iii) employees' deposit linked scheme contributions and the administrative charges for the period commencing from March, 1983 to October, 1984 the respondents issued notice to the petitioner dated 16.7.1987 to show cause as to why damages be not levied on the petitioner under

section 14-B of the Act. The petitioner was also afforded an opportunity of personal hearing. The record reveals that the hearing was adjourned from time to time and ultimately after hearing the representative of the petitioner and after considering the reply/submissions dated 6.8.1987 the impugned order has been passed. The petitioner had contended before the respondent hat it could not pay the amount in time for the reason that the sugar factory was newly erected in mofussil area and regular employees were not employed. The petitioner had pointed out that the sugar factory started its trial season in 1979-80 and regular production commenced in the year 1980. The petitioner had contended before the respondent that the Provident Fund Inspector had visited the factory and submitted a questionaire vide letter dated 9.3.1982 but no provisional code number was alloted to the sugar factory. The code number is said to have been allotted on 20.2.1984 whereas the act was made applicable with effect from 28.2.1983. Further reason was assigned for nonpayment of the amount in time and the same was to the effect that there was dispute regarding fixation of wages with the union representative and the dispute was resolved by entering into a settlement between the union and the management. The petitioner had further contended that they had deducted provident fund contribution from wages of the employees and immediately the amount was remitted to the respondent's office. It is not in dispute that after October, 1984 regular compliance of the provisions of the Employees Provident Fund and Miscellaneous Provisions Act has been made. The past dues were paid in two instalments on 7.8.84 and 16.1.85. It was thus tried to be canvassed that for the reasons beyond control of the petitioner timely payment of the amount could not be made. The Regional Provident Fund Commissioner has held that the

liability under the provisions of the Act and the scheme accrues on making of the provisions applicable and the same is not dependent upon service of notice or allotment of code number by the Provident Fund authorities. It held that the employer should have remitted the dues to the employees provident fund from the date of their liability without waiting for the allotment of code number. On account of delayed payment the employees provident fund was put to loss. The respondent-authority, taking over all view of the matter and realising the difficulties faced by the newly started sugar factory directed damages only by imposing interest at the rate of 10% p.a. For the period commencing from March, 1983 to 15.3.1984 and for the period beyond 15.3.84 interest has been saddled by way of damages at the rate of 25% p.a. The over all liability on account of damages levied under section 14B is in the sum of Rs.1,08,592/- which is a trival amount for a sugar factory. Perusal of the record does not reveal that the impugned order suffers from any illegality warranting interference in exercise of writ jurisdiction. Hence writ petition is dismissed. Needless to mention that the interim order stands vacated. Rule discharged with no order as to costs.